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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DEJON BROWN,

Defendant and Appellant.

F056933

(Super. Ct. No. DF008873B)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Robert S. Tafoya, Judge.

Thea Greenhalgh, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Hill, J., and Poochigian, J.

PROCEEDINGS

On June 23, 2008, appellant, Dejon Brown, waived his rights pursuant to *Boykin/Tahl*¹ and pled guilty to conspiracy to sell, furnish or distribute controlled substances with a person not in prison custody (Pen. Code, §§ 182, subd. (a)(1) & 4573.9, count one)² and for assisting, bringing, or sending a controlled substance into a state prison (§ 4573, count two). Appellant waived his constitutional rights and admitted two prior serious felony convictions within the meaning of the three strikes law (§§ 667, subds. (a)-(i) & 1170.12, subds. (a)-(d)) for robbery in 1996 and 2005. Under the terms of the plea agreement, there was a sentencing lid of 25 years to life but appellant could make a request pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) for the trial court to strike one or both prior serious felony convictions. Under the plea agreement, appellant could also appeal the trial court's exercise of discretion pursuant to *Romero*.³

Appellant filed a request pursuant to *Romero* for the court to strike one of the prior felony convictions.⁴ Appellant argued that he was only 19 years old when he committed

¹ *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122 (*Boykin/Tahl*).

² Unless otherwise noted, all statutory references are to the Penal Code.

³ There was no preliminary hearing. According to the probation officer's report, an investigative unit of the Kern Valley State prison determined that four conspirators, inmates Randy Williams and appellant, and civilians Ana Hernandez and Fiamma Williams were involved in bringing narcotics into the prison. Appellant was observed swallowing narcotics bindles during a visit by Ana Hernandez. A laboratory analysis of the contraband showed it was 12.4 grams of methamphetamine and 12.56 grams of marijuana.

⁴ On June 27, 2008, appellant filed his original request pursuant to *Romero* for the court to strike one or both of this prior serious felonies. There was apparently a factual error in this motion concerning appellant's age when committed his first prior serious felony.

his first strike. Counsel noted that appellant's offense did not involve violence and appellant was compliant with investigators.

The probation officer's report stated that appellant had juvenile adjudications in 1991 for receiving stolen property and 1992 for robbery with a firearm. For the second adjudication, appellant was committed to the California Youth Authority. Appellant was convicted of robbery in 1996 and sent to prison on a two-year sentence. He was paroled in December 1996, but violated parole two years later.

Appellant had a conviction in 1999 for possession of drugs in a prison, camp, or jail. He was committed to prison for 32 months, paroled in January 2003, and violated parole in February 2004. In 2003, appellant had a misdemeanor conviction for driving a vehicle without a license. Appellant violated probation three times in 2004 and 2005. Appellant had a misdemeanor conviction for battery in 2004 and a felony robbery conviction in 2005.

On January 14, 2009, at the sentencing hearing, appellant's counsel argued he was a young man when he committed his first strike offense. Counsel asked the court to grant *Romero* as to one of the prior serious felony allegations. The court initially noted it had reviewed the *Romero* case as well as *People v. Williams* (1998) 17 Cal.4th 148 (*Williams*). The court carefully reviewed appellant's adult criminal record, juvenile adjudications, and violations of probation and parole. The court noted that a factor to consider in the *Williams* case was the passage of time between convictions combined with a defendant's maturity and wisdom.

The court found that given appellant's record and the circumstances of this case which involved more than simple possession, it would be an abuse of the court's sentencing discretion to strike one of the prior serious felony convictions. The court denied appellant's request for it to exercise its discretion pursuant to section 1385 and *Romero*.

SECTION 1385 DISCRETION

Appellant contends the trial court abused its discretion in failing to strike one of his prior serious felony convictions pursuant to section 1385 and *Romero, supra*, 13 Cal.4th 497. We disagree and will affirm the judgment.

We review a ruling upon a motion to strike a prior felony conviction under a deferential abuse of discretion standard. (*Williams, supra*, 17 Cal.4th 148, 162.) Appellant bears the burden of establishing that the trial court's decision was unreasonable or arbitrary. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978 [presumption that trial court acts to achieve lawful sentencing objectives].) We do not substitute our judgment for that of the trial court. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310 (*Myers*).) "It is not enough to show that reasonable people might disagree about whether to strike one or more of [the defendant's] prior convictions." (*Ibid.*) "[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony* (2004) 33 Cal.4th 367, 377 (*Carmony I*).)

The court understood its authority to strike one or more prior serious felony conviction allegations. The court was acting well within its sentencing discretion in rejecting appellant's arguments that his crime was not violent and one of his prior serious felony convictions occurred when he was a young man. Furthermore, appellant squandered opportunities for clemency when placed on probation and parole. Appellant had multiple convictions in the 1990's and 2000's. In 2005, appellant was convicted of a new robbery. Appellant was in prison for this conviction when he reoffended.

Appellant is essentially asking this court to reweigh the evidence and substitute our judgment for that of the trial court. We decline his invitation to do so. "Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance." (*Myers, supra*, 69 Cal.App.4th at p. 310, quoted with approval in *Carmony I, supra*, 33 Cal.4th at p. 378.)

Appellant has a long criminal history and several failed attempts at parole and probation. The record in this case affirmatively shows that the court understood its discretionary authority and that it weighed all of the competing facts to reach a reasoned and reasonable conclusion. After evaluating the entirety of that information, the court drew its ultimate conclusion and declined to exercise its discretion to strike one or more of the strike priors. In view of these facts and circumstances, appellant has failed to show abuse of discretion. (See *Carmony I, supra*, 33 Cal.4th at pp. 378-380; *Myers, supra*, 69 Cal.App.4th at p. 310.)

DISPOSITION

The judgment is affirmed.